

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CASE NO. 09-CV-3065 DWF/RLE

KleinBank,)	
)	
Plaintiff,)	
)	
vs.)	ANSWER AND COUNTERCLAIM
)	OF THE DEFENDANT
Raymond W. Haugland, Yvonne J.)	UNITED STATES OF AMERICA
Haugland, United States of America)	DEPARTMENT OF THE TREASURY
Department of the Treasury - Internal)	- INTERNAL REVENUE SERVICE
Revenue Service John Doe)	
and Mary Rowe,)	
)	
Defendants.)	

Now comes the Defendant United States of America on behalf of the Department of the Treasury - Internal Revenue Service (hereinafter "United States") by and through its attorneys B. Todd Jones, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney and for its Answer denies all allegations in the Complaint except as specifically admitted herein.

1. The United States has insufficient knowledge or information to admit or deny the allegations contained in paragraphs 1 and 2 of the Complaint and accordingly puts plaintiff to its strict proof.

2. The United States admits the allegations contained in paragraph 3 of the Complaint.

3. The United States has insufficient knowledge or information to admit or deny the allegations contained in paragraphs 4, 5, 6, 7 and 8 of the Complaint and accordingly puts plaintiff to its strict proof.

4. In answering paragraphs 9 and 10 of the Complaint, the United States admits that the IRS claims an interest in the subject property pursuant to two federal tax liens. The United States also admits and affirmatively asserts that the Internal Revenue Service recorded with the Aitkin County Recorder, State of Minnesota a federal tax lien (IRS Serial Number:518508409) filed on March 4, 2009 as document number 392573 against Raymond W. Haugland and a federal tax lien (IRS Serial Number:522457709) filed on March 17, 2009 as document number 392813 against Yvonne J. Haugland as follows:

TAX PERIOD	DATE TAX ASSESSED	DATE RECORDED	DOCUMENT NUMBER	UNPAID BALANCE AS OF 10/30/2009
9/30/2002 to 12/31/2006	12/8/2008	3/4/2009	392573	\$250,339.36
9/30/2002 to 12/31/2006	12/8/2008	3/17/2009	392813	\$250,339.36

Said federal tax liens will continue to accrue interest and penalties as provided by Title 26, United States Code, Section 6601 and Section 6651(a)(2).

The United States denies that its federal tax liens are junior and subordinate to the mortgage interest of Plaintiff as identified in the Complaint. The United States affirmatively asserts that the federal tax lien interest filed against Raymond W. Haugland as document number 392573 and against Yvonne J. Haugland as document number 392813 is senior and superior to the mortgage interest of plaintiff in some or all of the subject real property described in the Complaint.

5. The United States has insufficient knowledge or information to admit or deny the allegations contained in paragraph 11 of the Complaint and accordingly puts plaintiff to its strict proof.

AFFIRMATIVE DEFENSES

1. The plaintiff has failed to state a claim with respect to the United States of America for which relief can be granted.
2. The United States of America has not waived its sovereign immunity, therefore, this Court only has jurisdiction as provided pursuant to 28 U.S.C. § 2410.
3. The United States of America objects to the release of any lien of the United States of America.

COUNTERCLAIM

The Defendant/Counterclaimant United States of America on behalf of the Department of the Treasury - Internal Revenue Service (hereinafter "United States") for its Counterclaim, states and alleges as follows:

1. Upon information and belief, Defendants Raymond W. Haugland and Yvonne J. Haugland (hereinafter "Haugland") are the fee owners of the property located in Aitkin County legally described as:

That part of Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota, to be described as follows: Commencing at a point on the South line of the Plat of Sandy Lake Beach where it intersects the southerly extension of the easterly line of Lot 30 of said Plat; thence Easterly along said South line of said plat a distance of 509.04 feet; thence South along the southerly extension of the westerly line of Lot 19 of said plat a distance of 125.00 feet; thence South 00 degrees 54 minutes 01 seconds West a distance of 383.94 feet to

a point hereby designated and hereinafter referred to as POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; thence South a distance of 100.00 feet to the actual point of beginning of the following tract of land to be described; thence South 16 degrees 27 minutes 56 seconds East a distance of 213 feet, more or less, to the shoreline of Big Sandy Lake; thence Northeasterly along said shoreline to its intersection with a line bearing South 79 degrees 56 minutes 57 seconds East from the actual point of beginning; thence North 79 degrees 56 minutes 57 seconds West a distance of 222 feet, more or less, to the actual point of beginning. It being the intent of this description that the southerly extension of the easterly line of said Lot 30 has an assigned bearing of South. Containing 0.6 acre, more or less. Subject to and together with an easement for road purposes as described on the attached Exhibit B (to follow below). Subject to easements, reservations, restrictions or ordinances now of record.

That part of Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota, to be described as follows: Commencing at a point on the South line of the Plat of Sandy Lake Beach where it intersects the southerly extension of the easterly line of Lot 30 of said Plat; thence Easterly along said South line of said plat a distance of 509.04 feet; thence South along the southerly extension of the westerly line of Lot 19 of said plat a distance of 125.00 feet; thence South 00 degrees 54 minutes 01 seconds West a distance of 383.94 feet to a point hereby designated and hereinafter referred to as POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; to the actual point of beginning of the following tract of land to be described; thence South a distance of 100.00 feet; thence South 79 degrees 56 minutes 57 seconds East a distance of 222 feet, more or less, to the shoreline of Big Sandy Lake; thence Northerly along said shoreline a distance of 102 feet, more or less, to its intersection with a line bearing South 80 degrees 53 minutes 37 seconds East from the actual point of beginning; thence North 80 degrees 53 minutes 37 seconds West a distance of 242.68 feet, more or less, to the actual point of beginning. It being the intent of this description that the southerly extension of the easterly line of said Lot 30 has an assigned bearing of South. Containing 0.6 acre, more or less. Subject to and together with an easement for road purposes as described on the attached Exhibit B (to follow below). Subject to easements, reservations, restrictions or ordinances now of record.

EXHIBIT B

A 33 foot wide perpetual easement for road purposes over, under and across the following described property: Government Lot 3 and Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota. Said easement being 16½ feet to the right and 16½ feet to the left of the following centerline to be described: Beginning at the before described POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; thence South a distance of 100.00 feet; thence South 16 degrees 27 minutes 56 seconds East a distance of 30.00 feet; thence North 16 degrees 27 minutes 56 seconds West a distance of 30.00 feet; thence North a distance of 100.00 feet; thence North 83 degrees 56 minutes 41 seconds West a distance of 373.00 feet; thence North 05 degrees 46 minutes 49 seconds East a distance of 221.40 feet; thence North 06 degrees 30 minutes 31 seconds West a distance of 279.36 feet to the south line of the plat of Sandy Lake Beach and there said centerline terminating. It is the intent of this description for the easterly and westerly lines of said easement to be lengthened or shortened to intersect with the south line of said plat.

(herein "Property").

2. The United States claims an interest in the subject property by virtue of two federal tax liens. The United States maintains that the Internal Revenue Service (hereinafter "IRS") on March 4, 2009 recorded with the Aitkin County Recorder, State of Minnesota, a federal tax lien (IRS Serial Number: 518508409) filed as document number 392573 against Raymond W. Haugland and on March 17, 2009, recorded with the Aitkin County Recorder, State of Minnesota, a federal tax lien (IRS Serial Number: 522457709) filed as document number 392813 against Yvonne J. Haugland. These IRS tax liens attach to any and all real estate owned by the taxpayers Raymond W. Haugland and Yvonne J. Haugland.

3. On January 22, 2004, Plaintiff KleinBank's Mortgage was recorded with the Aitkin County Recorder, as document number 355280. Plaintiff acquired said Mortgage through an Assignment of Mortgage dated August 14, 2007 and recorded on September 4, 2007, with the Aitkin County Recorder, as document number 383404. The legal description in plaintiff's mortgage did not cover all of the real property owned by the defendants, Raymond W. Haugland and Yvonne J. Haugland.

4. The United States alleges that the IRS federal tax liens filed against the subject real property are prior and superior to the mortgage lien of the plaintiff, KleinBank on the portion of the real estate not covered by the existing legal description in the KlienBank mortgage.

5. The United States requests that the Court declare that the federal tax lien interest of the United States is prior to that of the plaintiff, KleinBank, on the portion of the real estate not covered by the legal description contained in the Klein Bank mortgage.

WHEREFORE, the United States of America on behalf of the Department of the Treasury – Internal Revenue Service, prays for the following relief:

1. The Court recognize the two federal tax liens filed with the Aitkin County Recorder, State of Minnesota against Raymond W. Haugland as document number 392573 and against Yvonne J. Haugland as document number 392813 as good, valid and subsisting liens against the subject real property identified in the Complaint;

2. The Court recognize and protect the federal tax liens of the United States of America as being prior and superior to some or all of any right, interest or lien claimed by the plaintiff, KleinBank, in the subject property identified in the Complaint;

3. The Court recognize and protect the federal tax lien priority of the United States of America in the subject real estate as provided by law;

4. The Court deny plaintiff's request for an order reforming plaintiff's Mortgage; and

5. The United States of America be granted such further relief as this Court deems just and proper.

Dated: November 6, 2009

Respectfully submitted,

B. TODD JONES
United States Attorney

s/ Roylene A. Champeaux

BY: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
Email: Roylene.Champeaux@usdoj.gov
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States of America Department of Treasury - Internal Revenue Service